

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Martha Jane Toy, individually,	: C.A. No.:
And as Executrix and Personal	: 05-cv-1814
Representative of the Estate of	:
Russell B. Toy, deceased,	:
Plaintiffs,	:
V.	:
Plumbers & Pipefitters Local Union	:
No. 74 Pension Plan, Trustees of	:
Plumbers & Pipefitters Local Union	:
No. 74 Pension Plan, Health and Welfare	:
Plan, Local 74, Welfare Benefit Plan,	:
Life Insurance Plan, Local 74, Welfare	:
Benefit Plan, Life Insurance Plan,	:
Local 74, Insurance Plan, Administrators:	:
of Pension and Welfare Plans, Trustees	:
of Plumbers & Pipefitters Local Union	:
No. 74 Welfare Plan, Plan Administrator	:
of Pension & Welfare Plans, Insurance	:
Plans, and Health and Welfare	:
Benefit Plan,	:
Defendants.	:

COPY

Continuation of the deposition of
SCOTT A. ERNSBERGER, GEM Group, Senior Account
Executive, taken pursuant to notice before Tanya M.
Congo, a Notary Public and Certified Shorthand
Reporter, at the offices of Young, Conaway, Stargatt
& Taylor, LLP, the Brandywine Building, 1000 West
Street, 17th Floor Wilmington, Delaware, on Monday,
August 29, 2005, beginning at approximately 9:20
a.m., there being present:

APPEARANCES:

LAW OFFICES OF WILLIAM B. HILDEBRAND, L.L.C.
1040 Kings Highway North, Suite 601
Cherry Hill, New Jersey 08034
BY: WILLIAM B. HILDEBRAND, ESQUIRE
(Attorney for Plaintiffs)

JOHN M. STULL, ATTORNEY AT LAW
1300 North Market Street, Suite 700
Wilmington, Delaware 19899-1947
BY: JOHN M. STULL, ESQUIRE
(Attorney for Plaintiffs)

<p style="text-align: right;">Page 38</p> <p>1 MR. CROWTHER: You can answer that</p> <p>2 question.</p> <p>3 I'll reserve my objection, but I'll</p> <p>4 let him answer.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. HILDEBRAND:</p> <p>7 Q. And are you aware as to where the</p> <p>8 decisions were made on that claim?</p> <p>9 MR. CROWTHER: Again, I will reserve</p> <p>10 my objection that it exceeds Judge Schiller's Order,</p> <p>11 but I'll let him answer the question.</p> <p>12 Q. Do you understand the question?</p> <p>13 A. Can you repeat that.</p> <p>14 Q. Yes. This is really counsel's question.</p> <p>15 He wants to know where those decisions were made, the</p> <p>16 decisions to deny the Plaintiff's claim for</p> <p>17 additional pension, medical and life insurance</p> <p>18 benefits?</p> <p>19 MR. CROWTHER: Same objections, but</p> <p>20 you can answer.</p> <p>21 THE WITNESS: The decisions were made</p> <p>22 by the Trustees at Trustee meetings at locations in</p> <p>23 Delaware.</p> <p>24 BY MR. HILDEBRAND:</p> <p>25 Q. Now, how do you know?</p>	<p style="text-align: right;">Page 40</p> <p>1 jurisdictional discovery and exceeds Judge Schiller's</p> <p>2 latest Orders, and I'll instruct the witness not to</p> <p>3 answer.</p> <p>4 MR. HILDEBRAND: Why won't you let him</p> <p>5 answer that question?</p> <p>6 I mean, he says he's aware of stuff</p> <p>7 that went on in Delaware. I'm aware of stuff that</p> <p>8 went on in Pennsylvania, and you're not letting him</p> <p>9 answer that question with respect to the stuff in</p> <p>10 Pennsylvania.</p> <p>11 I'd just like to know whether he knows</p> <p>12 about the stuff that went on in Pennsylvania, whether</p> <p>13 he knows anything about this contact and</p> <p>14 communication or correspondence that transpired.</p> <p>15 MR. CROWTHER: I'll stand by the</p> <p>16 objections, counsel.</p> <p>17 MR. HILDEBRAND: But you're not going</p> <p>18 to explain why.</p> <p>19 MR. CROWTHER: Because I have one,</p> <p>20 two, three Court Orders which say you can't ask that</p> <p>21 question.</p> <p>22 MR. HILDEBRAND: All right. Well, I'm</p> <p>23 not aware of any such Court Orders.</p> <p>24 Well, at this point I think I've</p> <p>25 accomplished all I can accomplish within the ambit of</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. CROWTHER: Same objections, but</p> <p>2 you can answer.</p> <p>3 THE WITNESS: I was in attendance at</p> <p>4 those meetings.</p> <p>5 BY MR. HILDEBRAND:</p> <p>6 Q. Are you aware of anything -- any contact</p> <p>7 or communications regarding those claims that took</p> <p>8 place outside of those meetings that you attended?</p> <p>9 MR. CROWTHER: Same objections, but</p> <p>10 you can answer.</p> <p>11 THE WITNESS: Can you clarify the</p> <p>12 question. What you mean by -- can you repeat that</p> <p>13 and clarify what you mean by contacts.</p> <p>14 BY MR. HILDEBRAND:</p> <p>15 Q. Well, since you were at the meetings, I</p> <p>16 assume that you are aware of everything that went on</p> <p>17 at the meetings.</p> <p>18 Now, my question has to do with</p> <p>19 contacts and communications specifically between Fund</p> <p>20 counsel and counsel for Mrs. Toy that occurred</p> <p>21 outside of the ambit of a formal meeting?</p> <p>22 Do you have any information regarding</p> <p>23 any such contacts or communications?</p> <p>24 MR. CROWTHER: I'll interpose the</p> <p>25 objection that it's exceeding the scope of</p>	<p style="text-align: right;">Page 41</p> <p>1 counsel's continuing objections and instructions not</p> <p>2 to answer.</p> <p>3 I would have hoped that following two</p> <p>4 Court conferences it would be clear to counsel that</p> <p>5 critical information regarding jurisdiction should be</p> <p>6 provided, but apparently that's not clear.</p> <p>7 So, you know, we'll have to seek Court</p> <p>8 relief for a third time specifically with respect to</p> <p>9 the mailing lists which were requested in the</p> <p>10 Deposition Notice and not objected to but not</p> <p>11 provided, and the information concerning this</p> <p>12 witness' knowledge of the information provided in the</p> <p>13 Interrogatories.</p> <p>14 So I'm done for today.</p> <p>15 (Signature not waived)</p> <p>16 (Whereupon, at 10:58 a.m., the</p> <p>17 deposition was adjourned.)</p> <p>18</p> <p>19 I HAVE READ THE FOREGOING DEPOSITION,</p> <p>20 AND IT IS TRUE AND CORRECT TO THE BEST OF MY</p> <p>21 KNOWLEDGE.</p> <p>22</p> <p>23</p> <p>24 SCOTT A. ERNSBERGER</p> <p>25</p>